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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,308	12/22/2000	Maurizio Costantini	1729-400	8180
6449	7590	03/02/2004	EXAMINER	
ROTHWELL, FIGG, ERNST & MANBECK, P.C. 1425 K STREET, N.W. SUITE 800 WASHINGTON, DC 20005			WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 03/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/742,308	<b>Applicant(s)</b> COSTANTINI, MAURIZIO	
	<b>Examiner</b> Steven L. Weinstein	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 13-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 and 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whetstone ('872) in view of Ferrero (WO '093) or vice versa, both further in view of Bassett (GB. '970), Moderer (Ep '841), Moses ('420), Boon ('802), Terrasi ('414) and Klahn et al (4,014, 156) essentially for the reasons fully and clearly detailed in the Office action mailed 8/26/03.

Klahn et al is relied on as further evidence of the conventionality of wrapping of a two sectioned edible wherein the seam of the sections is covered by the wrapping and not a seam of the wrapping. New claim 13, like claim 2, recites that the one part of the wrapping projects beyond the selected part of the product. As disclosed, beside employing this technique to provide the offset seams, this allows the top part of the product to be guided onto the lower part. Klahn et al discloses a wrapper for a two part product wherein the wrapper extends beyond the lower part of the product and the top part of the product is then placed into the wrapper. Although Klahn et al teaches a single sheet wrapper rather than two parts, the art taken as a whole (e.g. Ferreo) already teaches two piece wrappers. The remainder of the new claims, i.e. 14-19, are rejected for the reasons given in the last Office action mailed 8/26/03.

All of applicant's remarks filed 11/26/03 have been fully and carefully considered but are not found to be convincing. Applications urgings for the most part are directed to limitations not found in the claims and indeed at least one of the limitations missing from

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the claims also appears to be critical as disclosed in the specification. Applicant first urges that the collar constitutes a guide for the second food part but this recitation is not found in many of the claims including claim 1. Also, applicant urges that the two food parts are kept in register during and after manufacture. The claims are totally silent as to how the food parts are kept in register after manufacture. In fact, the claims are silent as to size and shape of the wrapper relative to the food product. If the wrapper enclosing the food product is larger than the food product so that the food product has some room to shift, the registered product will come apart. As disclosed, the shape and dimensions of the two parts of the sheet material are overall more or less complementary to the shape and dimensions of the parts of the food product (page 6) such that when the two parts of the sheet material are secured together around the food product, the parts of the food product are coupled together substantially freely in the sense that the parts can be freely separated once removed from the sheet material; the parts of the food product being held together by the joined sheet material (page 9). Claims containing both this concept and the collar concept would be considered drawn to allowable subject.

Finally, in regard to the art, applicant has not addressed the art taken as a whole, rather choosing to comment specifically on only Whetsone and Ferrero. In regard to Whetsone, whether the parts join with each other or with the flange, they still must join in a non-adhering way with a surface so that it is not clear why the problems are different from those of applicants' product. In regard to Ferraro, Ferraro discloses two sheets and a two piece chocolate egg ("constituted by two complementary parts" page 1, page 2) so Ferraro does not disclose plurality of parts but Ferraro was not relied on to show "freely

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coupled together " which is taught by the art taken as a whole as detailed in the last Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1201.

S. Weinstein/af  
February 20, 2004

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
2/25/04  
Rem 8A69